

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS**



310026

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| In re: JAMES PIELET |) | Case No. 06-01026 |
| |) | Chapter 7 |
| Debtor. |) | |
| _____ |) | The Honorable A. Benjamin Goldgar |

- and -

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|--------------------------------|---|-----------------------------------|
| In re: J. P. INVESTMENTS, INC. |) | Case No. 06-01037 |
| |) | Chapter 7 |
| Debtor. |) | |
| _____ |) | The Honorable A. Benjamin Goldgar |

**CONSENT DECREE AND SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES, DOROTHY PIELET, AND THE TRUSTEE**

Recitals

A. On June 15, 2004, Debtor James Pielet filed a voluntary petition under Chapter 7 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq., as amended (the "Bankruptcy Code"). That case is now captioned In re James Pielet, Case No. 06-01026 (Bankr. N.D. Ill.).

B. On October 7, 2004, Debtor J.P. Investments, Inc. – an Illinois corporation wholly owned by Debtor James Pielet – filed a voluntary petition under Chapter 7 of the Bankruptcy Code. That case is now captioned In re J. P. Investments, Inc., Case No. 06-01037 (Bankr. N.D. Ill.).

C. Ilene F. Goldstein (the "Trustee") is the duly appointed, qualified, and acting bankruptcy trustee for the Chapter 7 estates of Debtor James Pielet and Debtor J. P. Investments, Inc. (collectively referred to herein as the "Debtors").

D. On December 28, 2004, the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), filed a Proof of Claim asserting a claim against the Chapter 7 estate of Debtor James Pielet (the "EPA's Pielet Case Proof of Claim"). The EPA's Pielet Case Proof of Claim asserted a claim based on a January 2002 final judgment against Debtor James Pielet in an action under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, captioned United States v. James Pielet, Civil Action No. 2:98 CV 203 JM (N.D. Ind.), relating to environmental contamination at the H&H Enterprises Site in Gary, Indiana (the "H&H Site"). More specifically, the Pielet Case Proof of Claim asserted a CERCLA claim for the H&H Site for at least \$3,089,002.77, including: (i) the \$2,959,006.34 judgment amount specified by the district court's final judgment; (ii) statutory interest on that amount from the date of entry of the judgment; and (iii) an additional \$129,996.43 in unreimbursed costs that are recoverable under the district court's declaratory judgment against the Debtor, plus interest on that amount.

E. The United States has re-confirmed the amount of its claim asserted in the EPA's Pielet Case Proof of Claim and has computed the statutory interest that accrued on that claim (through the date of the Debtor's petition), and has determined that such claim is for \$3,210,411.66.

F. The United States asserted that its claim in the EPA's Pielet Case Proof of Claim was a secured claim because the United States had recorded Abstracts of Judgment in several jurisdictions to perfect judgment liens on all real property of Debtor James Pielet in those

jurisdictions, as provided by 28 U.S.C. § 3201, including a particular parcel of property located at 7596 Bella Verde Way in Delray Beach, Florida (the “Bella Verde Property”). The United States asserted that its claim in the EPA’s Pielet Case Proof of Claim was a general unsecured claim to the extent that the United States’ claim exceeded the value of any collateral that was subject to its judgment liens.

G. On or about October 31, 2005, the United States, on behalf of EPA, filed a Proof of Claim asserting a claim against the Chapter 7 estate of Debtor J.P. Investments, Inc. (the “EPA’s JPI Case Proof of Claim”). The EPA’s JPI Case Proof of Claim asserted a CERCLA claim for the Midwest Metallica Site in Summit, Illinois (the “Midwest Metallica Site”) for at least \$5,087,276, including: (i) at least \$71,898 in past costs that EPA incurred in responding to the release or threatened release of hazardous substances at the Midwest Metallica Site; and (ii) an estimated \$5,015,378 in future costs associated with the Midwest Metallica Site. The claim set forth in the JPI Case Proof of Claim was asserted as a general unsecured claim.

H. Debtor James Pielet’s non-debtor spouse, Melissa Pielet, filed two Adversary Proceedings in the In re James Pielet case against the United States and certain other parties, alleging that certain real properties in Florida were jointly owed by Melissa Pielet and Debtor James Pielet by a tenancy by the entireties and that such real properties were therefore exempt from administration as part of Debtor James Pielet’s bankruptcy estate. One of those adversary proceedings – captioned Melissa Pielet v. Patricia Dzikowski (In re James Pielet), Case No. 06-01026, Adv. Proc. 06-00534 (Bankr. N.D. Ill.) – was dismissed pursuant to an August 23, 2006 Agreed Order entered in that case. The remaining adversary proceeding – captioned Melissa Pielet v. Patricia Dzikowski (In re James Pielet), Case No. 06-01026, Adv. Proc. 06-00535 (Bankr. N.D. Ill.) – concerned approximately \$725,000 in net proceeds of sale of the

Bella Verde Property. A set of settlements that the Court approved on December 20, 2006 provided for dismissal of that adversary proceeding and specified that: (i) the Debtor James Piolet and Melissa Piolet “will release any interest in and will waive and withdraw all exemptions related to” those funds; and (ii) the United States “will expressly reserve, and will not waive, its right to contend that its claim against the James Piolet estate is secured in part by a lien” on those funds. Pursuant to several court orders, the remaining net proceeds of the sale of the Bella Verde Property have been deposited in an interest-bearing account managed by the Trustee.

I. As specified herein, the proposed settlement set forth in this Consent Decree and Settlement Agreement (the “Settlement Agreement”) would, among other things, provide EPA: (i) a \$700,000.00 allowed secured claim against the estate of Debtor James Piolet, to be paid on a priority basis pursuant to 11 U.S.C. § 725; (ii) a \$2,510,411.66 allowed general unsecured claim against the estate of Debtor James Piolet; (iii) a \$3,391,517.33 allowed general unsecured claim against the estate of Debtor J. P. Investments, Inc.; and (iv) a \$1,695,758.67 allowed general unsecured subordinated claim against the estate of Debtor J. P. Investments, Inc. In any event, the total distributions to EPA under this Settlement Agreement shall not exceed \$1,025,000.00 from the estate of Debtor James Piolet and \$80,000.00 from the estate of Debtor J.P. Investments, Inc. (unless specific conditions are met).

J. On January 6, 2005, Dorothy Piolet filed a Proof of Claim asserting a claim against the Chapter 7 estate of Debtor James Piolet (“Dorothy Piolet’s Piolet Case Proof of Claim”) and Dorothy Piolet filed a separate Proof of Claim asserting a claim against the Chapter 7 estate of Debtor J.P. Investments, Inc. on February 4, 2005 (“Dorothy Piolet’s JPI Case Proof of Claim”). Both of those Proofs of Claim asserted claims for breach of contract and fraudulent

transfers, as originally alleged in a lawsuit filed in 1998 in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois. On February 6, 2008, those Proofs of Claim were amended with leave of court, and each of the amended Proofs of Claim asserts claims for a total of \$6,034,400.51.

K. As specified herein, the proposed settlement set forth in this Settlement Agreement would, among other things, provide Dorothy Pielet: (i) a \$6,034,400.51 allowed general unsecured claim against the estate of Debtor J. P. Investments, Inc.; (ii) a \$2,011,466.84 allowed general unsecured claim against the estate of Debtor James Pielet; and (iii) a \$4,022,933.67 allowed general unsecured subordinated claim against the estate of Debtor James Pielet. In any event, the parties agree that the total distributions to Dorothy Pielet under the Settlement Agreement shall not exceed \$142,500.00 from the estate of Debtor J.P. Investments, Inc. and \$262,500.00 from the estate of Debtor James Pielet (unless the specified conditions are met).

L. By entry into this Settlement Agreement, the United States and the Trustee (not individually, but in her capacity as the Chapter 7 trustee of the Debtors' estates) agree to settle, compromise, and resolve the claims of the United States asserted in the EPA's Pielet Case Proof of Claim and the EPA's JPI Case Proof of Claim (collectively referred to herein as the "EPA Claims"). In addition, by entry into this Settlement Agreement, Dorothy Pielet and the Trustee (not individually, but in her capacity as the Chapter 7 trustee of the Debtors' estates) agree to settle, compromise, and resolve the claims asserted in the Dorothy Pielet's Pielet Case Proof of Claim and Dorothy Pielet's JPI Case Proof of Claim (collectively referred to herein as the "Dorothy Pielet Claims"). Finally, by entry into this Settlement Agreement, the United States

and Dorothy Pielet agree to resolution of the EPA Claims and the Dorothy Pielet Claims as provided by this Settlement Agreement.

Stipulation and Agreement

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto – subject to the Bankruptcy Court’s approval of this Settlement Agreement – as follows:

Section I: Terms Relating to Resolution of the EPA Claims

1. The EPA Claims shall be allowed and paid as follows:

a. EPA shall have an allowed secured claim in the amount of \$700,000.00 against the estate of Debtor James Pielet of the kind specified in 11 U.S.C. § 506 (an “Allowed Secured Claim”), which shall be paid by the Trustee pursuant to 11 U.S.C. § 725 before any other funds are distributed to creditors in accordance with 11 U.S.C. § 726. EPA will waive and withdraw any assertion that its claim in EPA’s Pielet Case Proof of Claim should be treated as a secured claim for any amount greater than \$700,000.00.

b. EPA shall have an allowed general unsecured claim in the amount of \$2,510,411.66 against the estate of Debtor James Pielet, of the kind specified in 11 U.S.C. § 726(a)(2), which after payment of all allowed administrative claims and EPA’s Allowed Secured Claim shall be paid pari passu with the allowed general unsecured claim of Dorothy Pielet in the amount of \$2,011,466.84 and the allowed general unsecured claims of all other creditors.

c. EPA shall also have an allowed general unsecured claim in the amount of \$3,391,517.33 against the estate of Debtor J. P. Investments, Inc., of the kind specified in 11 U.S.C. § 726(a)(2), which after payment of all allowed administrative claims shall be paid pari passu with allowed general unsecured claim of Dorothy Piolet in the amount of \$6,034,400.51 and the allowed general unsecured claims of all other creditors.

d. EPA shall have an allowed general unsecured claim in the amount of \$1,695,758.67 against the estate of Debtor J. P. Investments, Inc., which shall be subordinated to the payment all other allowed general unsecured claims.

e. Notwithstanding the foregoing Subparagraphs 1.a and 1.b, the total distributions to EPA from the estate of Debtor James Piolet shall not exceed \$1,025,000.00, unless the total estate assets available for distribution to creditors exceed \$1,400,000.00. Notwithstanding the foregoing Subparagraphs 1.c and 1.d, the total distributions to EPA from the estate of Debtor J. P. Investments, Inc. shall not exceed \$80,000.00, unless the total estate assets available for distribution to creditors exceed \$250,000.00.

f. The Trustee will make the payment required by Subparagraph 1.a within 30 days after the Bankruptcy Court's approval of this Settlement Agreement, before making payments to any other creditors holding allowed general unsecured claims. The Trustee will make the payments required by Subparagraphs 1.b, 1.c, and 1.d at the same time as payments are made to other creditors holding allowed general unsecured claims.

g. All payments on the EPA Claims shall reference DOJ Case Numbers 90-11-2-1092/2 and 90-11-2-1092/3. Payment shall be made in accordance with

instructions to be provided by the United States after execution of this Settlement Agreement.

h. Upon receipt of payments on the EPA Claims, the payments shall be directed as follows:

(1) EPA will transfer fifteen percent (15%) of each payment to the EPA Hazardous Substance Superfund, as a payment toward EPA's unreimbursed response costs for the H&H Site; and

(2) EPA will transfer eighty-five percent (85%) of each payment to a site-specific special account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Midwest Metallica Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

2. The amounts of the actual payments received by EPA on account of this Settlement Agreement (and only those amounts) shall be credited by EPA to its accounts for the H&H Site and the Midwest Metallica Site and the liability of any other liable parties shall be reduced by the amount of the actual payments received by EPA and only those amounts.

3. The EPA's Pielet Case Proof of Claim and the EPA's J. P. Investments Proof of Claim against the Chapter 7 estates of Debtors James Pielet and J.P. Investments, Inc. are settled and satisfied in full by the terms of this Settlement Agreement.

4. United States' Covenants Not To Sue. In consideration of the payments or distributions that will be made under the terms of this Settlement Agreement, and except as provided in Paragraph 5, the United States covenants not to bring a civil action or take administrative action against the Debtors' estates or the Trustee for response costs or response

actions relating to the H&H Site and/or the Midwest Metallica Site pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. This covenant not to sue extends only to the Debtors' estates and the Trustee, and does not extend to any other person.

5. The covenants not to sue set forth in Paragraph 4 do not pertain to any matters other than those expressly specified in Paragraph 4. The United States reserves, and this Settlement Agreement is without prejudice to, any and all rights with respect to all other matters. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. The covenants not to sue in Paragraph 4 shall not apply to or affect any action to enforce the provisions of this Settlement Agreement.

6. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States either to take response action itself, or to order parties other than the Debtors' estates or the Trustee to take such response action, with respect to the H&H Site or the Midwest Metallica Site. Nothing in this Settlement Agreement shall be deemed to limit the future information gathering authority of the United States under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law.

7. With regard to claims for contribution for matters addressed in this Settlement Agreement, the Debtors' estates and the Trustee are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). For the purpose of this Paragraph 7, the "matters addressed" by this Settlement Agreement are all response costs or response actions relating to the H&H Site and/or the Midwest Metallica Site.

8. The Debtors' estates and the Trustee covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the H&H Site or the

Midwest Metallica Site, including but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund; (ii) any claims for contribution against the United States, its departments, agencies or instrumentalities; and (iii) any claims arising out of response activities at the H&H Site or the Midwest Metallica Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

Section II: Terms Relating to Resolution of the Dorothy Pielet Claims

9. The Dorothy Pielet Claims shall be allowed and paid as follows:

a. Dorothy Pielet shall have an allowed general unsecured claim in the amount of \$6,034,400.51 against the estate of Debtor J. P. Investments, Inc., of the kind specified in 11 U.S.C. § 726(a)(2), which after payment of all allowed administrative claims shall be paid pari passu with the allowed general unsecured claim of the EPA in the amount of \$3,391,517.33 and the allowed general unsecured claims of all other creditors.

b. Dorothy Pielet shall have an allowed general unsecured claim in the amount of \$2,011,466.84 against the estate of Debtor James Pielet, of the kind specified in 11 U.S.C. § 726(a)(2), which after payment of all allowed administrative claims and EPA's Allowed Secured Claim shall be paid pari passu with the allowed general unsecured claim of the EPA in the amount of \$2,510,411.66 and the allowed general unsecured claims of all other creditors.

c. Dorothy Pielet shall have an allowed general unsecured claim in the amount of \$4,022,933.67 against the estate of Debtor James Pielet, which shall be subordinated to the payment of all other allowed general unsecured claims.

d. Notwithstanding the foregoing Subparagraph 9.a, the total distributions to Dorothy Pielet from the estate of Debtor J. P. Investments, Inc. shall not exceed \$142,500.00, unless the total estate assets available for distribution to creditors exceed \$250,000.00. Notwithstanding the foregoing Subparagraphs 9.b and 9.c, the total distributions to Dorothy Pielet from the estate of Debtor James Pielet shall not exceed \$262,500.00, unless the total estate assets available for distribution to creditors exceed \$1,400,000.00.

e. The Trustee will make the payments required by Subparagraphs 9.a, 9.b, and 9.c at the same time as payments are made to other creditors holding allowed general unsecured claims.

f. Payments on the Dorothy Pielet Claims shall be made in accordance with payment instructions to be provided to the Trustee by counsel of record for Dorothy Pielet.

10. Dorothy Pielet's Pielet Case Proof of Claim and Dorothy Pielet's J. P. Investments Proof of Claim against the Chapter 7 estates of Debtors James Pielet and J.P. Investments, Inc. are settled and satisfied in full by the terms of this Settlement Agreement.

Section III: Other Terms

11. The Trustee and Dorothy Pielet hereby agree to resolution of the EPA Claims on the terms and conditions set forth in this Settlement Agreement, and hereby waive any objections to the allowance, priority, and payment of the EPA Claims as specified herein.

12. The Trustee and the United States hereby agree to resolution of the Dorothy Pielet Claims on the terms and conditions set forth in this Settlement Agreement, and hereby waive any

objections to the allowance, priority, and payment of the Dorothy Piolet Claims as specified herein.

13. This Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. In accordance with CERCLA and Department of Justice policy, the terms of this Settlement Agreement relating to resolution of the EPA Claims will also be subject to public comment following publication of notice of the proposed settlement in the Federal Register. The United States reserves the right to withdraw or withhold its consent to this Settlement Agreement if public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, or improper, or inadequate. If warranted after the public comment period, the United States will file a motion seeking approval and entry of this Settlement by the Bankruptcy Court. The Bankruptcy Court's approval and entry of this Settlement Agreement shall be signified by entry of a separate Order.

14. Upon approval and entry by the Bankruptcy Court, this Settlement Agreement shall constitute a final judgment under 28 U.S.C. § 157(b) regarding the allowance and priority of the EPA Claims and the Dorothy Piolet Claims on the terms and conditions set forth herein. The Court shall retain jurisdiction to resolve any disputes arising under this Settlement Agreement or to effectuate or enforce compliance with the terms of this Settlement Agreement.

15. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of either party with respect to the matters contained herein.

16. This Settlement Agreement represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings,

promises and representations made by the parties hereto concerning the subject matter hereof.

This Settlement Agreement may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

17. The undersigned representatives of each party hereto each certify that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such party to this document.

ENTER:

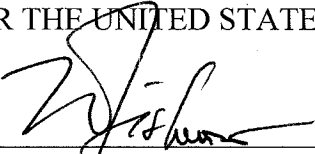
Dated: _____

United States Bankruptcy Judge


Signature Page for Consent Decree and Settlement Agreement in In re James Piolet, Case No. 06-01026 (Bankr. N.D. Ill.) and In re J. P. Investments, Inc., Case No. 06-01037 (Bankr. N.D. Ill.)

4/20/09
Date

FOR THE UNITED STATES OF AMERICA


W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice

4/20/09
Date

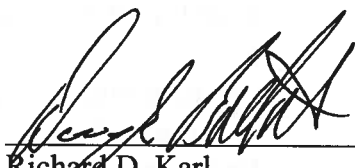

RANDALL M. STONE, Senior Attorney
JENNIFER A. LUKAS-JACKSON, Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Phone: (202) 514-1308
Facsimile: (202) 616-6584

PATRICK J. FITZGERALD
United States Attorney

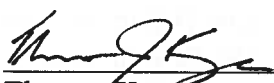
JOEL R. NATHAN
Assistant United States Attorney
219 S. Dearborn Street, Suite 500
Chicago, IL 60604

Signature Page for Consent Decree and Settlement Agreement in In re James Piolet, Case No. 06-01026 (Bankr. N.D. Ill.) and In re J. P. Investments, Inc., Case No. 06-01037 (Bankr. N.D. Ill.)

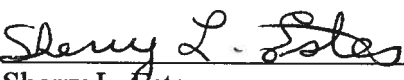
5/15/09
DATE


for Richard D. Karl
Superfund Division Director
U.S. EPA, Region 5

5/11/09
Date


Thomas Krueger
Associate Regional Counsel
U.S. EPA, Region 5

5/7/09
Date


Sherry L. Estes
Associate Regional Counsel
U.S. EPA, Region 5

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FOR ILENE F. GOLDSTEIN

(not individually, but as Chapter 7 Trustee of the
bankruptcy estates of Debtor James Piolet and Debtor J.P.
Investments, Inc.)

March 19, 2009

Date

Ilene F. Goldstein, Trustee

Ilene F. Goldstein

Law Offices of Ilene F. Goldstein, Chartered

850 Central Ave.

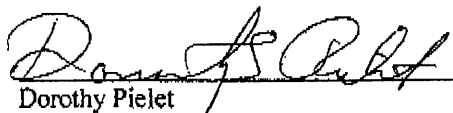
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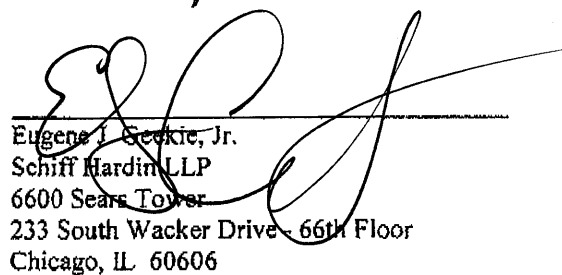
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FOR DOROTHY PIELET

4/12/09
Date


Dorothy Pielet

4/13/09
Date


Eugene I. Geekie, Jr.
Schiff Hardin LLP
6600 Sears Tower
233 South Wacker Drive - 66th Floor
Chicago, IL 60606

Counsel of Record for Dorothy Pielet